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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/773,503

02/06/2004

Michael E. McClurken

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MERCHANT & GOULD PC

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MINNEAPOLIS, MN 55402-0903

EXAMINER

PEFFLEY, MICHAEL F

ART UNIT

PAPER NUMBER

3739

MAIL DATE

DELIVERY MODE

05/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/773,503	<b>Applicant(s)</b> MCCLURKEN, MICHAEL E.	
	<b>Examiner</b> Michael Peffley	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 37,39-62 and 66-68 is/are pending in the application.
- 4a) Of the above claim(s) 52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37,39-51,53-62 and 66-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/6/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 1, 2008 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

Claims 37, 39-51 and 53-62 are rejected under 35 U.S.C. 102(b) as being anticipated by Eggers et al (6,032,674).

Eggers et al disclose a probe that includes an end-effector (i.e. distal end) that may simultaneously provide RF energy via one or more electrodes (270) and fluid (2783 to tissue (see Figure 18). Eggers et al also disclose a dimensional change sensor (310) which is an ultrasound sensor that detects a change in the thickness of tissue as it is being ablated. The sensor is used to control the output of RF energy and alerts the user of changing tissue thickness to prevent creating too deep a channel in tissue (col. 23, lines 50-63). The examiner maintains the device is inherently a "shrinkage sensor" since the channel created by the device is creating a shrinking tissue area (i.e. channel) that is being detected by the sensor, and the sensor provides feedback regarding the shrinking of the tissue (i.e. the depth of the channel).

Eggers et al disclose various arrangements for the electrodes, and the device may be operated in either a monopolar or a bipolar manner. Eggers et al also provide for multiple fluid lumens (figure 2a).

***Claim Rejections - 35 USC § 103***

Claims 66-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mulier et al (6,096,037) in view of the teaching of Huitema et al (5,562,702).

Mulier et al disclose a device for clamping and treating electrodes, and specifically teach that providing an electrolytic solution from fluid outlets in the jaws will enhance the delivery of energy to tissue. Figures 4 and 5 show the electrode in the jaw member, the electrode having a plurality of fluid outlets for delivering fluid to tissue. Mulier et al fail to specifically disclose a dimensional change sensor for measuring tissue thickness.

Huitema et al disclose another forceps device, and specifically teach that it is known to include sensors in forceps jaws for measuring tissue thickness (col. 9, lines 48-51). The Huitema et al forceps device may also include energy delivery means for treating tissue.

To have provided the Mulier et al forceps device with a sensor for measuring tissue thickness would have been an obvious consideration for one of ordinary skill in the art, particularly since Huitema et al teach that it is known to provide such sensors on forceps devices.

***Response to Arguments***

Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

Initially, applicant's Declaration with respect to the Bommannan et al patent has been considered. The examiner has withdrawn the rejection with this reference and has found another teaching of providing forceps devices with a sensor for measuring dimensional change of tissue (i.e. tissue thickness).

With regard to the Eggers et al reference, applicant contends that the Eggers et al transducer is static and is not configured to move relative to the dimensional change of the tissue. The examiner disagrees, as the catheter is introduced into the channel being created, the transducer is clearly moving with respect to the dimension of the tissue that is changing. Applicant's language "configured to move relative to the dimensional change of the tissue" implies no specific structure or mechanism for operation. It only states that the sensor is capable of moving relative to the tissue. Clearly, the Eggers et al transducer is capable of moving relative to the tissue, and the transducer clearly does move as the catheter is inserted deeper into tissue as the channel is being made.

The new grounds of rejection address applicant's claims 66-68, and the arguments with respect to the Bommannan et al reference are moot in view of this new ground of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 7am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Peffley/  
Primary Examiner, Art Unit 3739